

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ANTWOINE SCONIERS,

Plaintiff,

V.

WARDEN CALVIN JOHNSON, et al.,

Defendants.

Case No. 2:22-cv-01739-GMN-VCF

ORDER

(ECF Nos. 16, 17, 18, 19, 20)

9 Plaintiff Antwoine Sconiers brings this civil-rights action to redress constitutional
10 violations that she allegedly suffered while she was incarcerated at High Desert State Prison. (ECF
11 No. 15). On January 17, 2023, the Court screened Sconiers’s complaint, allowing some claims to
12 proceed and granting her leave to file an amended complaint by February 17, 2023, if she chose to
13 pursue claims about post-filing issues raised in her motions. (ECF No. 14). The Court denied
14 Sconiers’s application to proceed *in forma pauperis* (“IFP”) without prejudice to her ability to pay
15 the filing fee, file a new fully complete IFP application, or demonstrate that she was unable to
16 obtain the required financial documents from prison officials. (*Id.* at 23). And the Court denied
17 Sconiers’s emergency motions seeking pretrial equitable relief because they concerned matters
18 that fell outside of the complaint. (*Id.* at 19–21, 23).

19 Two weeks after the screening order was entered, Sconiers filed five motions seeking
20 various relief. (ECF Nos. 16–20). In one motion, Sconiers argues that she does not intend to file
21 an amended complaint and wants to proceed on the claims as stated in her complaint and the
22 Court’s January 17, 2023, screening order. (ECF No. 19). The Court grants this motion.

23 In another motion, Sconiers provides the first three pages of the Court’s approved IFP
24 application, which she has fully completed, and a written statement detailing the efforts she
25 undertook to try to obtain the required financial certificate and six-month inmate trust fund account
26 statement from prison officials. (ECF No. 20). Sconiers also details the efforts she undertook to
27 seek status updates about those documents from law librarians, the Nevada Department of

1 Corrections (“NDOC”) inmate banking department, and a prison caseworker. (*Id.* at 5–6). The
 2 Court is satisfied that Sconiers has done all that she can to obtain the required financial documents,
 3 so it considers her IFP application complete. And the Court defers a decision on the IFP
 4 application to later.

5 Finally, in three identical motions, Sconiers seeks a restraining order, a preliminary
 6 injunction, and a show-cause order requiring that prison officials release her from administrative
 7 segregation, transfer her to another prison, and keep all Defendants and nonparties Caseworker J.
 8 Jefferson, Sergeant Sanchez, and Correctional Officer Morales away from her. (ECF Nos. 16, 17,
 9 18). The Court denies the motion for an order to show cause (ECF No. 18) because that is not the
 10 appropriate procedural vehicle to obtain the extraordinary relief that Sconiers seeks. And Sconiers
 11 cannot shift the heavy burden to obtain that relief by having Defendants show cause why a
 12 temporary restraining order or injunctive-relief order should not issue.

13 What remains are Sconiers’s motions for a preliminary injunction and a temporary
 14 restraining order. (ECF Nos. 16, 17). Sconiers declares that since filing the complaint, she has
 15 been consistently placed in unsafe housing conditions, including being placed in a cell with several
 16 inmates who are known to be violent sexual predators and who threatened and harassed her, which
 17 purportedly happened in December 2022 and January 2023, and being placed in administrative
 18 segregation from January 13 to 27, 2023, without any bedding, mattress, or basic hygiene products
 19 like soap, oral-care items, and toilet paper. (*See, e.g.*, ECF No. 16 at 3–11). The Court will set a
 20 deadline for the NDOC to file any response to the motions seeking a temporary restraining order
 21 and a preliminary injunction.

22 For the foregoing reasons,

23 **IT IS HEREBY ORDERED** that the application to proceed *in forma pauperis* (ECF
 24 No. 20) is **CONSIDERED COMPLETE**, but a decision on the application is **DEFERRED** until
 25 later.

26 **IT IS FURTHER ORDERED** that the motion for an order to show cause (ECF No. 18)
 27 is **DENIED**.

1 **IT IS FURTHER ORDERED** that the Nevada Department of Corrections has until
 2 **February 15, 2023** to file any response to the motion for a temporary restraining order (ECF
 3 No. 17) and motion for a preliminary injunction (ECF No. 16). Plaintiff Sconiers will have seven
 4 (7) days after a response is filed to file any reply.

5 **IT IS FURTHER ORDERED** that the motion to proceed without an amended complaint
 6 (ECF No. 19) is **GRANTED**. Consistent with the Court's January 17, 2023, screening order (ECF
 7 No. 14), this action will proceed only on the following claims: (1) First Amendment retaliation
 8 against Defendants Johnson, Padilla, Kay, Rosses, and Ashcroft; (2) Eighth Amendment failure to
 9 protect against Defendants Kay, Padilla, Rosses, and Ashcroft; and (3) Eighth Amendment
 10 unconstitutional conditions of confinement claim against Defendant Johnson.

11 **IT IS FURTHER ORDERED** that given the nature of the claims that the Court has
 12 permitted to proceed, this action is stayed for 90 days to allow Sconiers and Defendants an
 13 opportunity to settle their dispute before the \$350 filing fee is paid, an answer is filed, or the
 14 discovery process begins. During this 90-day stay period and until the Court lifts the stay, no other
 15 pleadings or papers may be filed in this case, and the parties will not engage in any discovery, nor
 16 are the parties required to respond to any paper filed in violation of the stay unless specifically
 17 ordered by the Court to do so.¹ The Court will refer this case to the Court's Inmate Early Mediation
 18 Program, and the Court will enter a subsequent order about that matter. Regardless, on or before
 19 90 days from the date this order is entered, the Office of the Attorney General will file the report
 20 form attached to this order regarding the results of the 90-day stay, even if a stipulation for
 21 dismissal is entered prior to the end of the 90-day stay. If the parties proceed with this action, the
 22 Court will then issue an order setting a date for Defendants to file an answer or other response.
 23 Following the filing of an answer, the Court will issue a scheduling order setting discovery and
 24 dispositive motion deadlines.

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 1 The response and reply briefs that the Court has permitted the parties to file on the motions
 for a temporary restraining order and a preliminary injunction are excepted from this stay.

1 “Settlement” may or may not include payment of money damages. It also may or may not
2 include an agreement to resolve Sconiers’s issues differently. A compromise agreement is one in
3 which neither party is completely satisfied with the result, but both have given something up and
4 both have obtained something in return.

5 **IT IS FURTHER ORDERED** that if the case does not settle, Sconiers will be required to
6 pay the full \$350 statutory filing fee for a civil action. This fee cannot be waived, and the fee
7 cannot be refunded once the Court enters an order granting Sconiers’s application to proceed *in*
8 *forma pauperis*. If Sconiers is allowed to proceed *in forma pauperis*, the fee will be paid in
9 installments from her prison trust account. *See* 28 U.S.C. § 1915(b). If Sconiers is not allowed to
10 proceed *in forma pauperis*, the full \$350 statutory filing fee for a civil action plus the \$52
11 administrative filing fee, for a total of \$402, will be due immediately.

12 **IT IS FURTHER ORDERED** that if any party seeks to have this case excluded from the
13 inmate mediation program, that party will file a “motion to exclude case from mediation” no later
14 than 21 days before the date set for mediation. The responding party will have 7 days to file a
15 response. No reply will be filed. Thereafter, the Court will issue an order, set the matter for
16 hearing, or both.

17 **IT IS FURTHER ORDERED** that if Sconiers needs a translator to participate in the
18 mediation program, she will file a notice identifying the translation language and the need for the
19 translator within 30 days from the date of this order.

20 **IT IS FURTHER ORDERED** that the Attorney General’s Office will advise the Court
21 within 21 days of the entry date of this order whether it will enter a limited notice of appearance
22 on behalf of the Interested Party identified below for the purpose of settlement. No defenses or
23 objections, including lack of service, will be waived because of the filing of the limited notice of
24 appearance.

25 **IT IS FURTHER ORDERED** that the Clerk of Court is directed to add the Nevada
26 Department of Corrections to the docket as an Interested Party and electronically serve a copy of
27 this order, the screening order (ECF No. 14), the complaint (ECF No. 15), the motion for a

1 preliminary injunction (ECF No. 16), and the motion for a temporary restraining order (ECF
2 No. 17) on the Office of the Attorney General of the State of Nevada by adding the Attorney
3 General of the State of Nevada to the Interested Party on the docket. This does not indicate
4 acceptance of service.

5 The Clerk of the Court is further directed to change the spelling of Defendant Sgt. Ashcraft
6 on the docket to Defendant Sgt. Ashcroft.

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8 DATED THIS 2 day of Feb 2023.

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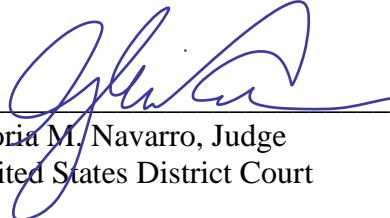
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Gloria M. Navarro, Judge
United States District Court

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REPORT OF ATTORNEY GENERAL RE: RESULTS OF 90-DAY STAY

NOTE: ONLY THE OFFICE OF THE ATTORNEY GENERAL SHALL FILE THIS FORM. THE INMATE PLAINTIFF SHALL NOT FILE THIS FORM.

10 On _____, the Court issued an order stating that it had conducted its
11 screening under 28 U.S.C. § 1915A, and that certain specified claims in this case would proceed.
12 Thereafter on _____, the Court ordered the Office of the Attorney General of the
13 State of Nevada to file a report within 90 days to indicate the status of the case at the end of the
14 90-day stay. By filing this form, the Office of the Attorney General hereby complies.

REPORT FORM

16 [Identify which of the following two situations (identified in bold type) describes the case, and
17 follow the instructions corresponding to the proper statement.]

18 **Situation One: Mediated Case:** The case was assigned to mediation by a court-appointed mediator during the 90-day stay. [If this statement is accurate, check ONE of the six statements below and fill in any additional information as required, then proceed to the signature block.]

19 — A mediation session with a court-appointed mediator was held on
20 _____ [enter date], and as of this date, the parties have reached a
21 settlement (*even if paperwork to memorialize the settlement remains to be*
22 *completed*). (*If this box is checked, the parties are on notice that they must*
23 *SEPARATELY file either a contemporaneous stipulation of dismissal or a motion*
24 *requesting that the Court continue the stay in the case until a specified date upon*
25 *which they will file a stipulation of dismissal*.)

26 — A mediation session with a court-appointed mediator was held on
27 _____ [enter date], and as of this date, the parties have not reached a
28 settlement. The Office of the Attorney General therefore informs the Court of its
29 intent to proceed with this action.

30 — No mediation session with a court-appointed mediator was held during the 90-day
31 stay, but the parties have nevertheless settled the case. (*If this box is checked, the*
32 *parties are on notice that they must SEPARATELY file a contemporaneous*
33 *stipulation of dismissal or a motion requesting that the Court continue the stay in*

this case until a specified date upon which they will file a stipulation of dismissal.)

- No mediation session with a court-appointed mediator was held during the 90-day stay, but one is currently scheduled for _____ [enter date].
- No mediation session with a court-appointed mediator was held during the 90-day stay, and as of this date, no date certain has been scheduled for such a session.
- None of the above five statements describes the status of this case. Contemporaneously with the filing of this report, the Office of the Attorney General of the State of Nevada is filing a separate document detailing the status of this case.

* * * * *

Situation Two: Informal Settlement Discussions Case: The case was NOT assigned to mediation with a court-appointed mediator during the 90-day stay; rather, the parties were encouraged to engage in informal settlement negotiations. [If this statement is accurate, check ONE of the four statements below and fill in any additional information as required, then proceed to the signature block.]

- The parties engaged in settlement discussions and as of this date, the parties have reached a settlement (*even if the paperwork to memorialize the settlement remains to be completed*). (*If this box is checked, the parties are on notice that they must SEPARATELY file either a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in this case until a specified date upon which they will file a stipulation of dismissal.*)
- The parties engaged in settlement discussions and as of this date, the parties have not reached a settlement. The Office of the Attorney General therefore informs the Court of its intent to proceed with this action.
- The parties have not engaged in settlement discussions and as of this date, the parties have not reached a settlement. The Office of the Attorney General therefore informs the Court of its intent to proceed with this action.
- None of the above three statements fully describes the status of this case. Contemporaneously with the filing of this report, the Office of the Attorney General of the State of Nevada is filing a separate document detailing the status of this case.

Date:

Signature of attorney

Printed name

Address

Telephone number

Email address